



Billing Code: 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2011-0726, FRL-9839-9]**

**Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards; Prevention of Significant Deterioration Requirements for PM<sub>2.5</sub> Increments and Major and Minor Source Baseline Dates; State Board Requirements; North Dakota**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) submission from the State of North Dakota to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter (PM<sub>2.5</sub>) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of North Dakota submitted certifications of their infrastructure SIP on August 12, 2010 and May 22, 2012 for the 2006 PM<sub>2.5</sub> NAAQS. In addition, the State of North Dakota submitted a certification of their infrastructure SIP on May 25, 2012 for the 1997 PM<sub>2.5</sub> NAAQS. EPA is also approving SIP revisions that the State of North Dakota submitted that update the Prevention of Significant Deterioration (PSD) program and the SIP provisions regarding state boards.

**EFFECTIVE DATE:** This final rule is effective **[FEDERAL REGISTER: insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No.EPA-R08-

OAR-2011-0726. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ayala, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6142, [ayala.kathy@epa.gov](mailto:ayala.kathy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CBI mean or refer to confidential business information.
- (iii) The word Department means or refers to the North Dakota Department of Health.
- (iv) The words EPA, we, us or our mean or refer to the United States Environmental

Protection Agency.

- (v) The initials NAAQS mean or refer to national ambient air quality standards.
- (vi) The initials NSR mean or refer to new source review.
- (vii) The initials PM mean or refer to particulate matter.
- (viii) The initials PM<sub>2.5</sub> mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (ix) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (x) The initials SIP mean or refer to State Implementation Plan.

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### **I. Background**

Infrastructure requirements for SIPs are provided in sections 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPR), published on May 13, 2013 (78 FR 27898).

In the NPR, EPA proposed to approve North Dakota's submissions for the following infrastructure elements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS: CAA section 110(a)(2)(A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We proposed to approve North Dakota's submissions for element (D)(i)(II) with

respect to PSD requirements for the 2006 PM<sub>2.5</sub> NAAQS. In conjunction with our action on North Dakota's infrastructure SIP submittals, EPA also proposed to approve a portion of the State's January 24, 2013 submittal revising the State's PSD program: specifically, the portion incorporating by reference the text of 40 CFR part 52, section 21, paragraphs (b)(14)(i), (ii), and (iii); (b)(15)(i) and (ii); and paragraph (c) as those paragraphs existed on January 1, 2012. Additionally, EPA proposed to approve the portion of the April 8, 2013 submittal that revised Chapter 2, Section 2.15, Respecting Boards. Finally, EPA will act separately on infrastructure element (D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS.

The approval of the above portion of the January 24, 2013 submittal incorporates the PM<sub>2.5</sub> increments into the State's PSD program and updates the program to meet the current requirements for all regulated NSR pollutants. As a result, North Dakota's SIP satisfies the PSD requirements in infrastructure elements (C) and (J). In addition, with our approval of the portion of the April 8, 2013 submittal regarding state boards, the North Dakota SIP meets the current requirements for section 128 and element (E)(ii) regarding disclosure requirements that apply to any person that approves permits or enforcement orders under North Dakota's implementation of the CAA.

## **II. Response to Comments**

No comments were received on our May 13, 2013 NPR.

## **III. Final Action**

EPA is approving the following infrastructure elements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS: CAA 110(a)(2)(A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is approving (D)(i)(II) with respect to PSD

requirements for the 2006 PM<sub>2.5</sub> NAAQS. EPA is approving a portion of the State's January 24, 2013 submittal revising the State's PSD program. Specifically, we are approving the inclusion into the North Dakota SIP of the text of 40 CFR part 52, section 21, paragraphs (b)(14)(i), (ii), and (iii); (b)(15)(i) and (ii); and paragraph (c) as those paragraphs existed on January 1, 2012. Additionally, EPA is approving the portion of the April 8, 2013 submittal revising Chapter 2, Section 2.15, Respecting Boards. Finally, EPA will act separately on infrastructure element (D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-

4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the

U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 12, 2013.

Shaun L. McGrath,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended to read as follows:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart JJ - North Dakota**

2. Section 52.1820 is amended by:

a. Revising provision, 35-15-15-01.2 within table (c).

b. Revising table (e) item (1), and adding item (31) to table (e).

The revisions read as follows:

**§ 52.1820 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

State of North Dakota Regulations

State citation	Title/subject	State effective date	EPA approval date and citation	Explanations
* * * * *	* * *			
33-15-15 Prevention of Significant Deterioration of Air Quality				
* * * * *	* * *			
33-15-15-01.2	Scope	10/27/10	9/27/12, 77 FR 64734	Also refer to 40 CFR 52.1829(c), (d)
* * * * *	* * *			

\* \* \* \* \*

(e) \* \* \*

<b>Name of nonregulatory SIP provision</b>	<b>Applicable geographic or non-attainment area</b>	<b>State submittal date/adopted date</b>	<b>EPA approval date and citations</b>	<b>Explanations</b>
(1) Implementation Plan for the Control of Air Pollution for the State of North Dakota	Statewide	Submitted: 1/24/72; Adopted: 1/24/72	5/31/72, 37 FR 10842	Excluding subsequent revisions, as follows: Chapters 1, 2, 6, 7, 9, 11, and 12; Sections 1.14, 2.11, 2.15, 3.7, 6.8, 6.10, 6.11, 6.13, 7.7, and 8.3; and Subsections 3.2.1, 5.2.1, 6.11.3, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1. Revisions to these non-regulatory provisions have subsequently been approved. See below.
* *	* *	*	*	*
(31) Revisions to Chapter 2, Section 2.15, Respecting Boards (revised)	Statewide	3/1/13	<b>[FEDERAL REGISTER INSERT DATE OF PUBLICATION AND CITATION OF FINAL RULE]</b>	

\* \* \* \* \*

3. Section 52.1829 is amended by adding paragraphs (c) and (d) as follows:

**§ 52.1829 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

(c) Definitions. For the purpose of this section:

(1) "Major source baseline date" means:

- (i) In the case of PM<sub>10</sub> and sulfur dioxide, January 6, 1975;
- (ii) In the case of nitrogen dioxide, February 8, 1988; and
- (iii) In the case of PM<sub>2.5</sub>, October 20, 2010.

(2) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

- (i) In the case of PM<sub>10</sub> and sulfur dioxide, August 7, 1977;
- (ii) In the case of nitrogen dioxide, February 8, 1988; and
- (iii) In the case of PM<sub>2.5</sub>, October 20, 2011.

(3) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and
- (ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(4) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than  $1 \mu\text{g}/\text{m}^3$  (annual average) for  $\text{SO}_2$ ,  $\text{NO}_2$ , or  $\text{PM}_{10}$ ; or equal or greater than  $0.3 \mu\text{g}/\text{m}^3$  (annual average) for  $\text{PM}_{2.5}$ .

(5) Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

- (i) Establishes a minor source baseline date; or
- (ii) Is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

(d) Ambient air increments. (1) In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean	1
24-hr maximum	2
PM <sub>10</sub> :	
Annual arithmetic mean	4
24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II Area	
PM <sub>2.5</sub> :	

Annual arithmetic mean	4
24-hr maximum	9
PM <sub>10</sub> :	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III Area	
PM <sub>2.5</sub> :	
Annual arithmetic mean	8
24-hr maximum	18
PM <sub>10</sub> :	
Annual arithmetic mean	34
24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

4. Section 52.1833 is amended by adding paragraph (c) to read as follows:

**§52.1833 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(c) EPA is approving the following infrastructure elements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS: CAA section 110(a)(2)(A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is approving (D)(i)(II) with respect to PSD

requirements for the 2006 PM<sub>2.5</sub> NAAQS.

[FR Doc. 2013-18039 Filed 07/29/2013 at 8:45 am; Publication Date: 07/30/2013]